IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.48 OF 1992

Nageshwar Co-operative Housing Society Ltd ... .. Appellants (Orig.Plffs)

Vs

1. State of Maharashtra, through the Collector, Thane

2. The Maharashtra Shikshan Parasarak Mandal, .. Respondents. (Defts)

Mr V.S.Gokhale i/b Mr B.P.Apte, for the appellants.

Mr S.N.Gawade, AGP for the respondent-State.

CORAM : **D.B.BHOSALE,J.**
DATE : 21.02.2007

ORAL JUDGMENT:

1. This second appeal under section 100 of the Code of Civil Procedure is directed against the concurrent judgments of the courts below, by which the appellants' suit for declaration of ownership and for injunction stands dismissed.

2. The dispute pertains to only 1 acre and 2 gunthas of land, out of survey no.93-A/Part, situate at village Ayare, within the jurisdiction of Ayare Group Gram Panchayat, Ayare Koper, District Thane (for short "the

suit land"). The case set up by the appellants-plaintiffs is that they are the owner and in possession of various agricultural lands comprising in area of 5 acres and 6 gunthas and 5 anna, that is, 24926 sq.yards, out of Survey no.93-A. This land was reserved as Gurucharan/Gairan. This land was sold by the Gram Panchayat for Rs.99,854/- to the plaintiff by a registered Deed of Conveyance dated 15.6.1966. It appears that on 12.6.1970 the respondent - defendant no.2-Maharashtra Shikshan Mandal, made an application to the Collector, Thane for grant of additional land out of survey no.93-A/Part of village Ayare, for College of Arts and Commerce Building. The Collector, Thane, by his order dated 18.3.1972, granted the suit land to defendant no.2 allegedly part and parcel of 5 acres and 6 gunthas of the land purchased by the plaintiffs vide sale deed dated 15.6.1966. According to the plaintiffs, defenant no.2 attempted to erect fencing on 22.7.1973 and 29.4.1978, which forced them to file the present suit for declaration and injunction.

3. Defendant no.2, by its written statement, contended that the suit property is the government land and it was allotted to them under the provisions of the Mahashtra Land Revenue Code and that the plaintiffs, in

any case, cannot claim to be its owner. Both the courts below, after having considered the evidence on record led by the parties, have concurrently held that the plaintiffs are not the owner of the land described as A,B,C, and D shown in green colour in the plan attached to the plaint. The courts below have further held that the plaintiffs failed to prove that defendant no.2 threatened to dispossess them from the suit land either on 22.7.1973 or 29.4.1978.

4. It is against this backdrop, Mr Gokhale, learned counsel for the appellants, submitted that the courts below have committed an error of law in holding that the plaintiffs are not the owner of the suit land in the face of the registered sale deed executed by the Gram Panchayat in their favour. He further submitted that the act of the Collector to grant the land in dispute in favour of defendant no.2 was illegal since the property was already conveyed to the plaintiffs. He did not urge any other contention.

5. Admittedly, the suit land, which is a part of survey no.93-A of village Ayare Koper, situate within the jurisdiction of Ayare Group Gram Panchayat, Ayare Koper, and it was a Gurucharan land. Ayare Group Gram Panchayat executed a registered deed/conveyance in

favour of the plaintiffs on the basis of which the plaintiffs claim title to the suit land. The plaintiffs claim that the suit land is a part and parcel of the land purchased by them by the registered sale deed dated 15.6.1966. Mr Gokhale, learned counsel for the appellants, could not explain as to how the Gram Panchayat got ownership of the suit land and how could they execute the registered sale deed in respect thereof in favour of the plaintiffs. He could not and did not dispute that the suit land belongs to the Government. In the circumstances, the findings recorded by the courts below that the plaintiffs are not the owner of the land described as A,B,C and D shown in green colour in the Plan attached to the plaint, cannot be faulted. I, however, refrain from expressing any opinion about the right of the plaintiffs over the land, other than the suit land, purchased by them vide conveyance dated 15.6.1966 since in the present appeal that land is not the subject matter and in this appeal we are concerned only with the suit land. Moreover, the findings of the courts below are confined only against the suit land. In the circumstances, the contention of the learned counsel for the appellants must be rejected. No substantial question of law, in my opinion, is either raised or involved in the appeal. Considering that there are concurrent findings recorded by the courts

below and as I find sufficient material on record, which is evident from the reasons recorded by both the courts below, to sustain those findings and considering the extremely limited jurisdiction of this

Court under section 100 of Code of Civil Procedure to disturb the findings of fact, this appeal fails and dismissed as such. No order as to costs.

(D.B.BHOSALE,J.)

HIGH COURT
CIVILI APPELLATE SIDE

SECOND APPEAL NO. 48 OF 1992

Date of Judgment:

21.02.2007.

For approval and signature

THE HON'BLE MR.JUSTICE D.B.BHOSALE

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad or Goa offices?